

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Superior, Montana))

MM Docket No. 97-61
RM-9010

FCC MAIL SECTION
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NOTICE OF PROPOSED RULE MAKING

Adopted: February 7, 1997

Released: February 14, 1997

Comment Date: April 7, 1997

Reply Date: April 22, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Mountain Tower Broadcasting ("Mountain Tower"), proposing the allotment of Channel 298A to Superior, Montana, as that community's first local service. Mountain Tower indicated it would apply for Channel 298A at Superior.
2. In support of its request, Mountain Tower has provided an engineering statement that indicates a channel can be allotted to Superior. According to Mountain Tower, Superior possesses all of the normal attributes of a community for allotment purposes.¹ Superior, with a population of 881 persons is located in west central Montana in Mineral County which has a population of 3,315 people. Mountain Tower states that allotment of an FM channel to Superior will provide an outlet for warning the Superior area of emergency conditions caused by severe weather or other health hazards. Mountain Tower points out that the closest FM allotment to Superior is located in Missoula, Montana, which is 80 kilometers from Superior.
3. A staff engineering analysis indicates that Channel 298A can be allotted to Superior, Montana, in compliance with the Commission's spacing requirements without a site restriction.²

¹ The 1995 edition of the Rand McNally Commercial Atlas indicates that Superior is the County Seat for Mineral County; has its own post office and zip code, banks, hospital and a population of 881 people according to the 1990 Census.

² The coordinates for Channel 298A at Superior are 47-11-30 and 114-53-18.

Although the proposal for Channel 298A at Superior complies with the Commission's spacing requirements, we note that both the community of Superior and the allotment site for Channel 298A are located in the Lolo National Forest. Therefore, Mountain Tower is requested to provide information showing that an actual transmitter site is available that provides city grade coverage to Superior. Since the community of Superior is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence will be requested for this allotment.

4. In view of the fact that the proposed allotment would provide a first local service to Superior, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 298A to Superior, Montana. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Superior, as follows:

Community	Channel No.	
	Present	Proposed
Superior, Montana	-----	298A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **April 7, 1997**, and reply comments on or before **April 22, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Victor . Michael Jr.
President, Mountain Tower Broadcasting
c/o Magic City Media
1912 Capitol Avenue, Suite 300
Cheyenne, Wyoming 82001

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.